

Members

Sen. Beverly Gard, Chairperson
Sen. Kent Adams
Sen. Glenn Howard
Sen. Vi Simpson
Rep. Ron Herrell
Rep. Jonathan Weinzapfel
Rep. Richard Mangus
Rep. David Wolkins
Gary Reding
Randy Edgemon
Mayor William Goffinet
Mayor James Trobaugh
Art Smith, Jr.
Ellen Tobias
William Hayden
Kerry Manders
Lori F. Kaplan
Sandra Miles



ENVIRONMENTAL QUALITY SERVICE COUNCIL

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Robert Bond, Attorney for the Council
Bernadette Bartlett, Fiscal Analyst for the Council

Authority: P.L. 248-2001 (SEA 121)

MEETING MINUTES¹

Meeting Date: October 30, 2001
Meeting Time: 1:00 P.M.
Meeting Place: Governmental Center South,
402 W. Washington St.,
Conference Room C
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Sen. Beverly Gard, Chairperson; Sen. Kent Adams; Rep. Ron Herrell; Rep. Jonathan Weinzapfel; Rep. Richard Mangus; Rep. David Wolkins; Gary Reding; Randy Edgemon; Mayor William Goffinet; Mayor James Trobaugh; Art Smith, Jr.; Ellen Tobias; William Hayden; Kerry Manders; Lori F. Kaplan; Sandra Miles.

Members Absent: Sen. Glenn Howard; Sen. Vi Simpson.

Sen. Gard opened the meeting at 1:05 p.m. The minutes from the EQSC meeting of October 15 were approved. The minutes from the EQSC meeting of September 8, 2001, were amended to add the following after the sentence referring to Glenn Pratt on page 5: "He particularly suggested that for major metropolitan areas such as Marion and Allen Counties that the septic systems tax credit be authorized for connections to sewers where the septic systems are creating a health problem and are in integral contiguous areas of the "old" city."

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Commissioner Kaplan gave the commissioner's report, which included the following:

1. Outreach, education, and assistance from September 1 through September 30, 2001 (Exhibit 1)
2. Rulemaking updates for the environmental rulemaking boards (Exhibit 2)
3. Fees collected (Exhibit 3)
4. Permits report cards and permit charts (Exhibit 4)
5. News releases from September 25 through October 24, 2001 (Exhibit 5)

Sen. Gard questioned Commisisoner Kaplan on NPDES permit renewals that have been pending for long periods, including some that have been pending for years. Commissioner Kaplan provided information on the administratively extended NPDES permits and the technical, legal, and policy issues involved in permit review.

Sen. Gard opened discussion of air issues. Janet McCabe, Indiana Department of Environmental Management (IDEM), addressed the EQSC on "Air Toxics in Indiana and Emission Reporting." Exhibit 6 is a copy of her presentation slides. She discussed: (1) the identification of "hazardous air pollutants" (HAP) under the Clean Air Act; (2) the manner in which Indiana addresses air toxics under the federal program; (3) the use of air toxic emissions data; (4) the Indiana Tox Watch air monitoring program; (5) data and cancer benchmarks under the National-Scale Air Toxics Assessment; (6) the Indiana Toxics Release Inventory; (7) the use of emission information for air quality planning; (8) the reasons for adding air toxics reporting to the proposed emission reporting rule of the Air Pollution Control Board and related policy issues; (9) the pollution sources to which the proposed rule applies and the reporting level under the proposed rule; (10) the difficulties and costs associated with estimation of air toxic emissions; (11) other states' air toxics reporting; and (12) the status of the proposed rule.

Bernie Paul, Eli Lilly and Company, discussed the proposed emission reporting rule on behalf of the Indiana Manufacturing Association's Air Subcommittee and the Indiana Chamber of Commerce's Air Subcommittee. Exhibit 7 is a copy of his presentation slides. Mr. Paul expressed general support for collection, management, and use of emissions data by IDEM, subject to certain concerns. He discussed the history of emission reporting, the current rule on the subject, and the changes under the proposed rule. He expressed concerns that the proposed rule: (1) needs to protect confidentiality of information collected; (2) addresses too many objectives; (3) is not cost effective because of its scope, detail, and frequency of data collection; (4) results in duplication with existing data reporting systems; (5) results in excessive costs to industry; (6) includes a HAP emission reporting list too broad for every source in the state; (7) includes too few emissions calculation factors; and (8) includes a reporting threshold that is too small (20 pounds/year). Mr. Paul suggested that the concerns could be addressed by revising the proposed rule to require a request and justification from IDEM to obtain additional emissions information, and by establishing an Air Toxics Advisory Group to work with IDEM staff.

Mike Brown, American Electric Power, discussed the proposed emission reporting rule on behalf of the Indiana Electric Utility Air Work Group (IEUAWG). Exhibit 8 is a copy of his presentation slides. IEUAWG does not object to current air emissions reporting requirement, but has concerns that the proposed rule: (1) is overly broad with respect to HAP reporting; (2) fails to capture data on mobile sources, which account for the majority of HAP emitters; (3) is not consistent with the Clean Air Act approach of correlating HAP emissions reporting to public health hazards; (4) is redundant with other reporting requirements; (5) results in excessive reporting burdens and costs; and (6) fails to resolve technical issues in reporting. IEUAWG would like the proposed rule to be withdrawn until

the U.S. Environmental Protection Agency (EPA) acts on its Consolidated Emission Reporting Rule. If the proposed rule is not withdrawn, IEUAWG would like a cost analysis to be performed, and revisions to cause the proposed rule to be more targeted, more focused, based on risk, and more reasonable with respect to reporting thresholds.

In response to questions from Sen. Gard, Ms. McCabe indicated: (1) that existing resources will cover new IDEM responsibilities under the proposed rule through a change in focus from previous responsibilities to air toxics responsibilities; (2) that IDEM has not had detailed discussions with the Indiana State Department of Health on correlating information collected by IDEM with a data base on health problems associated with air pollutants; (3) that it is difficult to correlate air pollutants with specific health problems; (4) the uses to which collected data is put by IDEM; (5) statutory authority for the adoption of the proposed rule; and (6) that focus will not be shifted away from examination of mobile air pollution sources.

In response to questions from Art Smith, Jr., Ms. McCabe addressed the levels of expertise in IDEM to deal with responsibilities under the proposed rule, the reasons for the addition of certain pollutants to the list of pollutants initially created by EPA, and the problems of air monitoring in rural areas.

Rep. Herrell expressed concerns about the costs to industry of the reporting requirements under the proposed rule. Ms. McCabe addressed penalties for failure to comply with reporting requirements under the proposed rule, and the use of collected data with respect to specific companies.

Mr. Smith expressed concerns that more specific statutory authority should apply for the adoption of this type of proposed rule, which should include a component of explanation to the public of collected data.

In response to questions from council members, Ms. McCabe addressed: (1) whether trade-offs are required between collecting data and setting priorities; (2) the relationship between the collection of air pollutant data and the issuance of air permits; and (3) the movement of federal law toward the use of health based air quality standards.

Sen. Gard began discussion of the recommendations to be included in the EQSC Final Report. Discussion was held on each of the subject areas considered by the EQSC this year, and each of the following recommendations was voted on and approved.

1. Air Issues

The Indiana Department of Environmental Management (IDEM) should establish a working group to consider issues under the proposed emission reporting rule of the Air Pollution Control Board. The working group should include representatives from the regulated community, environmental organizations, the Indiana Department of Commerce (IDC), and the Indiana State Department of Health (ISDH). Before May 1, 2002, the working group should complete its work and submit a report to the EQSC.

2. Environmental Crimes

The General Assembly should establish an Environmental Crime Task Force ("Task Force") to prepare a report to the General Assembly, the EQSC, and the Governor before January 1, 2005 recommending, if determined appropriate by the Task Force, an

appropriate Indiana environmental crime statute. The Task Force should include legislators, an appellate judge, and representatives from IDEM, local government, environmental interests, and the regulated community. The Task Force should consider the full range of issues dealing with environmental law.

The report of the Task Force should contain:

- (1) A summary of environmental crime statutes of other states.
- (2) A summary of requirements of federal environmental programs delegated to states.
- (3) A summary of federal criminal sentencing guidelines.
- (4) Recommendations about which Indiana environmental law violations should be a misdemeanor, a Class D felony, or another class of felony.
- (5) If determined appropriate by the Task Force, recommended legislation including a set of specific statutory standards for determining criminal violations.

3. Wetlands

The General Assembly should establish a Wetland Study Committee with members including heads of key state agencies and stakeholder representatives. The Committee should:

- (1) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:
 - (a) as a long-term strategy, the types and functions of wetlands that are valued in particular geographic areas; and
 - (b) the means for restoration, maintenance, and protection of wetlands, including the agencies to be involved and the incentives to be offered.
- (2) Identify whether sections of the Water Pollution Control Board proposed rules on wetlands and proposed rules under Section 401 of the Clean Water Act are redundant by virtue of existing state or federal programs. This is to be accomplished with the goal of eliminating inefficient use of limited state agency resources and to free up agency personnel to better implement other programs.
- (3) Recommend the appropriate role of and components of banking programs as a part of a mitigation rule to foster private initiatives to restore wetlands in the context of a rational state-wide wetland strategy.
- (4) Suggest a statutory definition of "private pond" as used in the definition of "waters" in IC 13-11-2-265, in light of the decision in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001).
- (5) Suggest a statutory definition of "waters of the state".

4. State Revolving Loan Fund

A. The recommendations in the U.S. Environmental Protection Agency's Fiscal Year 2000 Annual Review of the Wastewater State Revolving Fund Program and the Drinking Water State Revolving Fund Program (Attachment 1) should be implemented.

B. The Wastewater State Revolving Loan Fund potential recipient list should be expanded to allow non-point source pollution controls. However, before expanding opportunities for grants and loans to parties wishing to address non-point source pollution, IDEM and the Indiana Department of Natural Resources together should, with public involvement, establish written criteria for setting priorities about approving projects for explicit categories of non-point source pollution.

C. IDEM should take action as soon as possible to release set-aside funds to assist municipalities in complying with new Safe Drinking Water Act regulatory mandates.

5. Septic Systems

A. The General Assembly should create statutory authority for local governments to approve septic system management districts to assure that septic systems are managed appropriately in the districts and to provide a funding mechanism for counties to assist in correcting septic system problems.

B. Research should be done on the effectiveness of different types of septic system designs.

C. IDEM and ISDH should report to the EQSC on means to expedite approval of use of experimental on-site sewage treatment technologies such as constructed wetlands. The approval should include a special provision to address corrective measures should the system fail.

D. Local health departments should establish programs for education on the maintenance of septic systems.

6. State Funded Technical Assistance

A. IDEM and IDC together should prepare and maintain a comprehensive inventory of all state funded technical assistance programs and applied research programs with a description of the level of funding and the focus of efforts.

B. The EQSC should explore ways to assure that state-funded technical assistance efforts are coordinated and are periodically evaluated for effectiveness.

C. Means to better utilize the resources of state funded universities should be explored.

7. Recycling

A municipality should be permitted to institute curbside recycling only if the municipality has a recycling program that applies to all facilities owned or operated by the municipality.

8. Water Data Task Force

The Water Data Task Force (WDTF) should divide its consideration between policy decisions that require information to achieve IDEM regulatory mandates and policy decisions that require information to achieve other water quality objectives.

(1) For the regulatory mandates, the broad categories of issues requiring data are:

- (a) identifying surface waters that are impaired for a given parameter and those that are not impaired for the parameter;
- (b) finding and fixing sources of an impairment; and
- (c) establishing and assuring compliance with permit limits for intentional discharges.

(2) The WDTF should ask the following of the regulatory mandates:

- (a) What are the quality and character of the data required for each IDEM policy decision in these programs?
- (b) How can the data of other agencies and sources of information be best used for each of the three program areas?
- (c) Where is it critical that the data be collected by IDEM and where could

other parties become an integral part of data collection for regulatory purposes?

(3) For both the regulatory mandates and the other IDEM water protection initiatives, the WDTF should ask:

(a) How can the IDEM Office of Water Quality (OWQ) be organized to make best use of data collected from its staff and others and of resources devoted to data collection?

(b) How can efforts of other data sources be coordinated better to meet the needs of the OWQ?

(c) Is it of value to create and support a single position at IDEM to be knowledgeable about the data needs of all OWQ programs and the data collection capabilities of all programs (and other sources) and have the authority to coordinate all IDEM data collection efforts to maximize efficiency?

(d) What value would be achieved if more resources were devoted to surface water data collection, management, and analysis in each OWQ program area?

9. Outdoor Lighting

The Governor should establish an Outdoor Lighting Task Force ("Task Force") comprised of representatives of all stakeholders to review existing model municipal ordinances and to develop a model ordinance for local governments to consider. The Task Force should make recommendations for state policy concerning outdoor lighting. Stakeholders should include representatives of public interest groups, astronomers, public safety officials, municipal government, energy utilities, retail, industry, experts on lighting, and other businesses. The Task Force should report before November 1, 2002, to the General Assembly, the EQSC, and the Governor.

Sen. Gard indicated that a draft of the EQSC Final Report will be circulated to council members.

Sen. Gard adjourned the meeting at 5:15 p.m.